PART IV

ADMINISTRATIVE PROCESSING OF CLAIMS, POWERS AND DUTIES OF THE ADMINISTRATIVE LAW JUDGE

D. EVALUATION AND WEIGHING OF EVIDENCE

4. MEDICAL REPORTS

e. Qualifications of Physicians

An administrative law judge may, in his or her discretion, assign more weight to a physician's report based on that physician's superior qualifications, ***Scott v. Mason Coal Co.***, 14 BLR 1-37 (1990)(en banc recon.); ***McMath v. Director, OWCP***, 12 BLR 1-6 (1988); ***Dillon v. Peabody Coal Co.***, 11 BLR 1-113 (1988); ***Martinez v. Clayton Coal Co.***, 10 BLR 1-24 (1987); ***Wetzel v. Director, OWCP***, 8 BLR 1-139 (1985), but is not required to do so, ***Clark v. Karst-Robbins Coal Co.***, 12 BLR 1-149 (1989)(en banc); ***DeFore v. Alabama By-Products Corp.***, 12 BLR 1-27 (1988); ***Worley v. Blue Diamond Coal Co.***, 12 BLR 1-20 (1988).

The administrative law judge may also give less weight to a medical report when the physician does not provide a qualifications or experience statement. ***Kendrick v. Kentland-Elkhorn Coal Corp.***, 5 BLR 1-730, 1-733 (1983).

The Board has also held that unless the opinions of the physicians obtained by the parties are properly held to be biased, based on evidence in the record, the opinions of Department of Labor physicians should not be accorded greater weight due to their impartiality, and absent a foundation in the record for a finding that the Department of Labor's expert is independent, the administrative law judge may not accord his opinion greater weight on that basis alone. ***Melnick v. Consolidation Coal Co.***, 16 BLR 1-31 (1991)(en banc).

CASE LISTINGS

[Third Circuit held it reasonable for adjudicator to give more weight to testimony of physician who performed autopsy over one who reinterpreted autopsy based on slides sent to him] ***United States Steel Corp. v. Oravetz***, 686 F.2d 197, 4 BLR 2-130 (3d Cir. 1982); *see also* ***Fetterman v. Director, OWCP***, 7 BLR 1-688 (1985); ***Kinnick v. National Mines Corp.***, 2 BLR 1-221 (1979); ***McLaughlin v. Jones & Laughlin Steel***

Corp., 2 BLR 1-103 (1979).

[pathologist not *per se* incompetent to render opinions that relate pathological findings to functional capacity of living persons] ***Markatan v. Jones & Laughlin Steel Corp.***, 6 BLR 1-940 (1984).

[qualifications of physicians is relevant consideration in weighing conflicting medical opinions and fact-finder's crediting of medical report for this reason proper] ***Massey v. Eastern Associated Coal Corp.***, 7 BLR 1-37 (1984); ***Kozele v. Rochester & Pittsburgh Coal Co.***, 6 BLR 1-378, 1-382 (1983).

[adjudicator may credit medical opinion with superior credentials] ***Cunningham v. Pittsburg and Midway Coal Co.***, 7 BLR 1-93 (1984); ***Ousley v. National Mines Corp.***, 6 BLR 1-560 (1983).

[adjudicator properly credited opinion of consulting physician over opinion of autopsy prosector where latter's inconsistent; autopsy prosector may have no advantage over consulting physician where both asked to interpret same exhibits] ***Cadwallader v. Director, OWCP***, 7 BLR 1-879 (1985); *see also* ***Dipyatic v. Bethlehem Mines Corp.***, 7 BLR 1-758 (1985).

[pathologist not unable *per se* to give opinion concerning presence of lifetime disability simply because he did not examine miner during his life] ***Ham v. Bethlehem Mines Corp.***, 8 BLR 1-3 (1985).

DIGESTS

The administrative law judge may credit the opinion of a doctor with greater expertise. ***Dillon v. Peabody Coal Co.***, 11 BLR 1-113 (1988); ***Wetzel v. Director, OWCP***, 8 BLR 1-139 (1985).

In weighing x-ray evidence, the administrative law judge need not defer to the physician with superior qualifications. ***McMath v. Director, OWCP***, 12 BLR 1-6 (1988).

The administrative law judge is not required to defer to the physician with superior qualifications. ***Clark v. Karst-Robbins Coal Co.***, 12 BLR 1-149 (1989)(en banc); ***Worley v. Blue Diamond Coal Co.***, 12 BLR 1-20 (1988).

While it is in the discretion of the administrative law judge as to whether to give more weight to a medical opinion based on the qualifications of a physician, s/he can not speculate as to whether a physician's conclusions would have been affected by knowledge of additional medical data. ***Parulis v. Director, OWCP***, 15 BLR 1-28

(1991).

In determining the existence of complicated pneumoconiosis, the administrative law judge acted within his discretion in assigning greater weight to the opinion of the autopsy prosector, and less weight to the opinions of pathologists who only reviewed histological slides. ***Gruller v. Bethenergy Mines, Inc.***, 16 BLR 1-3 (1991).

Based on their holdings in ***Stanford v. Director, OWCP***, 7 BLR 1-906 (1985); ***Brown v. Director, OWCP***, 7 BLR 1-730 (1985); and ***Chancey v. Consolidation Coal Co.***, 7 BLR 1-240 (1984), the Board held that unless the opinions of the physicians obtained by the parties are properly held to be biased, based on evidence in the record, the opinions of the Department of Labor physicians should not be accorded greater weight due to their impartiality, and absent a foundation in the record for a finding that the Department of Labor's expert is independent, the administrative law judge may not accord his opinion greater weight on that basis alone. ***Melnick v. Consolidation Coal Co.***, 16 BLR 1-31 (1991)(*en banc*).

At Section 718.202(a)(4), the administrative law judge is not required to defer to the physicians with superior qualifications. ***Trumbo v. Reading Anthracite Co.***, 17 BLR 1-85 (1993).

Where the administrative law judge considered a physician's credentials in pulmonary medicine but determined that the physician's opinion was undermined by defective reasoning, the administrative law judge adequately considered the physician's qualifications in weighing the medical report. ***Gross v. Dominion Coal Corp.***, 23 BLR 1-8 (2003).

When analyzing the medical opinions, the administrative law judge should explicitly address the impact of the physicians' comparative credentials on his or her weighing of the evidence, *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th. Cir. 1998) and *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997). ***Dempsey v. Sewell Coal Corp.***, 23 BLR 1-47 (2004)(*en banc*).

The Sixth Circuit held that the administrative law judge did not adequately explain his reasons for crediting the opinions of Drs. Broudy and Fino. The Sixth Circuit found "no rational explanation" for the administrative law judge's determination that Dr. Broudy's opinion was more credible than Dr. Rasmussen's opinion regarding the existence of pneumoconiosis, especially after the administrative law judge found that Dr. Broudy's report contained little rationale or explanation and that Dr. Rasmussen's report was well-reasoned. The Sixth Circuit noted, moreover, that what explanation Dr. Broudy did provide for his opinion that claimant did not have pneumoconiosis, directly supported Dr. Rasmussen's finding of pneumoconiosis based on the blood gas study results. With regard to Dr. Fino, the Sixth Circuit held that Dr. Fino's credentials were not necessarily

superior to those of Dr. Rasmussen, where Dr. Fino was Board-certified in Internal Medicine and Pulmonary Disease and Dr. Rasmussen was Board-certified in Internal Medicine only but had extensive experience in pulmonary medicine and in the specific area of coal workers' pneumoconiosis. The Sixth Circuit also determined that the record refuted the administrative law judge's finding that Dr. Fino reviewed Dr. Rasmussen's exercise blood gas study and diffusing capacity test results and had determined that they were not indicative of pneumoconiosis. The Sixth Circuit thus vacated the Board's decision affirming the administrative law judge's finding at 20 C.F.R. §718.202(a)(4) and the denial of benefits, and remanded the case to the administrative law judge for further consideration. ***Martin v. Ligon Preparation Co.***, 400 F.3d 302, BLR (6th Cir. 2005).

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